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facie presumption is that the killing was wilful, deliberate and premeditated, and the burden of proving extenuating circumstances is cast upon the prisoner.

4. APPEAL AND ERROR—*Exceptions must point out errors.* This court will not consider an exception to the action of a trial court in giving instructions of its own in lieu of those offered by a party, unless the exception points out the error in the action of the trial court.

5. JURORS — *Objection to competency after verdict—Waiver.* An objection to a juror because he is under the age of twenty-one years comes too late after verdict. The objection, though good if raised in time, must be deemed to have been waived.

6. HOMICIDE—*Drunkenness as an excuse for crime.* If an accused was not so much under the influence of liquor at the time of the commission of an offence as not to know what he was doing, or not to know right from wrong, it is immaterial that he has been accustomed to drink heavily for years, and was drinking at that time.

ROGERS AND OTHERS V. PATTIE, TRUSTEE.—Decided at Richmond, December 1, 1898.—*Buchanan, J.* Absent, *Riely* and *Cardwell, JJ.*

1. MUTUAL MISTAKE—*Relief in equity—Executory and executed contracts.* A mutual mistake of parties in an executory contract in a matter which is part of the essence of the contract and of the substance of the thing contracted for will be relieved against in a court of equity, and may be good ground for rescinding the contract, or of specifically executing it upon equitable terms of compensation according to circumstances. But where the contract has been executed and rescission is asked on the ground of mutual mistake, the mistake must be plain and palpable, and must affect the very substance of the thing contracted for, and not merely a material part of such substance. The loss of a part of a lot of land bought for speculation, and which has been conveyed to the purchaser is ground for compensation at his instance, but not for rescission.

2. MUTUAL MISTAKE—*Remedies at law and in equity.* A vendee of real estate may go into a court of equity on the ground of mutual mistake and recover compensation for land lost, notwithstanding he has the right to proceed at law on his covenants for title.

ROANOKE STREET RAILWAY CO. AND OTHERS V. HICKS, TRUSTEE, AND OTHERS.—Decided at Richmond, December 1, 1898.—*Harrison, J.* Absent, *Riely, J.*

1. CHANCERY PLEADING—*Discovery—Corporations—Who must be parties—Complete relief.* If a party is properly before a court of equity for a discovery, the court having possession of the subject will proceed to decide the case, unless the discovery is sought and obtained to be used in a court of law. But some one must be made a defendant who can answer under oath. A corporation answers under its corporate seal, and if it is the sole defendant to a bill for discovery only the bill will be dismissed. The usual and proper method is to make some officer of the corporation who knows the facts sought to be elicited a co-defendant with the corporation.

2. CHANCERY PRACTICE—*Specific performance—Impossibility of performance.* A